



STATE OF WISCONSIN – JUDICIAL COUNCIL

AGENDA

WISCONSIN JUDICIAL COUNCIL

APRIL 16, 2021 – 9:00 A.M.

CONDUCTED ONLY BY ZOOM

MADISON, WISCONSIN

This meeting of the Council is being hosted by Scott Kelly, Chief of Staff of Senator Wanggaard. He has provided the following login information:

**On 4/16/21 at 9 a.m., join Council Zoom Meeting using the following URL:
<https://zoom.us/j/93826787757>¹ There is no password.**

We want to thank Senator Wanggaard and Scott Kelly for their help. Please note the Public Notice at the end of this Agenda. Members of the public will be permitted to attend this meeting but must agree to refrain from disrupting the meeting in any. If anyone is unsure how to sign into the meeting, please email Bill Gleisner (gleisnerwilliam@gmail.com) or call him at 414-651-3182.

- I. Roll Call and approval of the February 19, 2021 Minutes.
- II. An interesting but very important point has been raised by Judge Hruz, Chair of the Appellate Practice Committee. As we all know, under Wis. Stat. §758.13, the Council must limit itself to issues involving judicial procedure (including administrative rules) or rules of evidence. And yet,

¹ Scott has provided the following additional information concerning the Zoom meeting:

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how do we determine the delineation between procedural and substantive issues and what do we do when there are mixed procedural and substantive issues? Judge Hruz's Committee has encountered what appears to be a mixed procedural and substantive issue and has asked the Council for its guidance. In the following quote, Judge Hruz defines the issue:

For a few years now, the Appellate Procedure Committee has been studying the gap between Wis. Stat. § 971.14, case law--in particular, *State v. Debra A.E.*, 188 Wis. 2d 111, 523 N.W.2d 727 (1994) (directing courts on competency proceedings at postconviction and appellate stages), and *State v. Scott*, 2018 WI 74, 914 Wis. 2d 141, 382 N.W.2d 476 (holding that an order for the involuntary treatment of a criminal defendant for the purposes of restoring competency to stand trial is appealable as of right as an appeal from a final order in a special proceeding)--and the absence of procedural rules on how to pursue an appeal of an involuntary treatment order and how to proceed in light of *postconviction* competency problems. The committee initially began looking at drafting rules to codify case law and provide a structure for postconviction and appellate competency proceedings, including the possible structure for an expedited appeal of an involuntary treatment order before trial. To do so, we have added ad hoc members on the committee very familiar with this subject from the DOJ, SPD and DHS. What has become clear is that a number of draft statutory provisions members of the committee have raised--and even advocated for--are arguably substantive--indeed, some of these issues are currently being actively litigated in Wisconsin courts at this time. I would ask for direction from the Council at large how best to ensure we remain limited in our work to what is proper and within the Council's charge.

In preparation for the April 16th meeting, please review Judge Hruz's formulation of the above issue. The Council will discuss Judge Hruz's concern at the upcoming April 16th meeting and offer our input.

- III. During the February 19, 2021 Council meeting, Justice Dallet raised the issue of Federal Rule 44.1 which governs the interpretation of foreign laws. Justice Dallet asked if the Council could examine the Federal approach to such interpretations vis-à-vis the current Wisconsin approach. Sarah Zylstra agreed to do some research concerning Federal Rule 44.1 and provide a report at the upcoming April 16th meeting regarding the current status of how Wisconsin handles foreign law interpretations versus how

foreign law interpretation is done on the federal level. For the information of the Council, a Wisconsin Court has recently addressed the issue of interpreting foreign laws in the case of *Hennessey v. Wells Fargo Bank*, 2020 WI App 64, 394 Wis. 2d 357, 950 N.W.2d 877 (a copy of which decision is being supplied with this agenda). That case is now under review in the Wisconsin Supreme Court pursuant to a Petition for Review filed November 6, 2020 (a copy of that Petition is also being supplied with this agenda). Briefing is currently under way in the Supreme Court.

It is my opinion that the Council can provide meaningful input to the Supreme Court regarding this issue without referring the issue to one of our committees. After Sarah's presentation at the April 16th meeting, I will state my reasons why I believe we can supply our position to the Supreme Court without making a referral to one of our committees.

IV. Committee Reports.

(a) Evidence & Civil Procedure Committee.

(b) Criminal Procedure Committee.

(c) Appellate Procedure Committee.

V. Adjournment.

PUBLIC NOTICE

All meetings of the Judicial Council and its committees are open to the public. The Council's April 16, 2021 meeting will be conducted by Zoom. Members of the public are welcome to join the meeting by using the URL which is set forth above, namely <https://zoom.us/j/93826787757>. However, members of the public must supply their name before they will be granted admission. In addition, the mikes of the public participants will be muted. If any member of the public disrupts the meeting in any way, they will be removed from the meeting and will be barred from readmission. For more information, please contact the Chair of the Judicial Council, Mr. Gleisner, at 414-651-3182 or gleisnerwilliam@gmail.com.